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13 ATTORNEYS FOR PLAINTIFFS
 14 WINDSOR AUCTIONS, INC. AND
 15 JEWELRY AUCTIONS CORPORATION

16 *PLV/T*
 17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

19 WINDSOR AUCTIONS, INC., a Florida
 20 corporation, and JEWELRY AUCTIONS
 21 CORPORATION, a New Jersey corporation,

22 Plaintiffs,

23 v.

24 EBAY INC., a Delaware corporation,

25 Defendant.

26 **C07 06454 PVT**
 27 CASE NO. 06454 PVT

28 COMPLAINT FOR:

- 29 (1) Violation of Robinson-Patman Act
 30 15 U.S.C. §§13 *et seq.*;
- 31 (2) Violation of Unfair Practices Act
 32 California Business and Professions
 33 Code § 17045;
- 34 (3) Common Law Unfair Competition
- 35 (4) Breach of the Implied Covenant of
 36 Good Faith and Fair Dealing

37 DEMAND FOR JURY TRIAL

38 Plaintiffs Windsor Auctions, Inc. and Jewelry Auctions Corporation (together,
 39 "Plaintiffs") allege as follows:

40 **PARTIES**

41 1. Plaintiff Windsor Auctions, Inc. ("Windsor Auctions") is a Florida corporation
 42 having its principal place of business at 111 Flagship Drive, Lutz, Florida 33549.

43 **FILED**

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 46 CLERK
 47 U.S. DISTRICT COURT
 48 NO. DIST. OF CAL. S. J.

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2. Plaintiff Jewelry Auctions Corporation is a New Jersey corporation having its principal place of business at 36 Franklin Turnpike, Waldwick, New Jersey, 07463.

3. Defendant eBay Inc. ("eBay") is a Delaware corporation having its principal place of business at 2145 Hamilton Avenue, San Jose, California 95125.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1332.

5. This Court has personal jurisdiction over eBay in that eBay's principal place of business is located in this jurisdiction.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as this is a judicial district in which a substantial part of the events giving rise to the claims occurred.

COMMON ALLEGATIONS

7. eBay owns and operates the largest online marketplace in the world at its website located at www.ebay.com. eBay promotes the goods and services of others by making available and facilitating a worldwide online marketplace through which users may advertise their goods and services via the Internet. eBay facilitates direct sales transactions between users, and also facilitates live auctions through its website located at www.ebayliveauctions.com ("eBay Live Auctions").

8. In 2002, Live Auctioneers LLC ("Live Auctioneers"), a New York limited liability company, established a partnership with eBay to help bring auction catalogs to the Internet for live online bidding. Live Auctioneers offers technology and services connecting auction houses and bidders through eBay Live Auctions. Live Auctioneers offers a technological platform through which remote auction transactions can be made on eBay's website.

9. On information and belief, eBay earns a lesser commission on live auction sales conducted with the assistance of Live Auctioneers than it does on live auctions conducted directly through eBay.

10. Plaintiffs are in the business of selling jewelry. In 2005, Windsor Auctions entered into agreements with both Live Auctioneers and eBay, pursuant to which Windsor

1 Auctions would sell jewelry domestically and internationally through eBay Live Auctions.
 2 Plaintiffs commenced selling jewelry through Live Auctioneers and eBay Live Auctions. From
 3 mid-2005 through 2006, sales for Windsor Auctions through eBay's Live Auctions exceeded
 4 \$1.4 million.

5 11. Commencing in mid-2007, Plaintiffs realized that instead of enjoying increased
 6 sales to a projected \$2.8 million for 2007, Plaintiffs' sales and revenues were decreasing
 7 markedly.

8 12. While Plaintiffs' sales and revenue were decreasing, those of a competitor
 9 increased dramatically. George Molayem runs a variety of businesses, including but not limited
 10 to Hillstreet Jewelers, Paramount Auctions, and Jewelry Overstock Auctions, all of which
 11 conduct live auctions through eBay Live Auctions. Mr. Molayem does not use the intermediary
 12 services of Live Auctioneers; rather, he is a direct client of eBay.

13 13. When Plaintiffs did not receive a satisfactory explanation from eBay and Live
 14 Auctioneers as to how Mr. Molayem was able to keep his sales items so prominently listed in
 15 eBay's "core listings," Plaintiffs asked Mr. Molayem directly. Plaintiffs discovered that Mr.
 16 Molayem had access to an auction time-duration tool (the "Batch Uploading Tool") that, when
 17 manipulated, allowed him to upload auction items in batches, placing his sales items at the front
 18 of eBay's "core listings," which appear first in sales listings on the website. Mr. Molayem's
 19 manipulation of the Batch Uploading Tool allowed his items to be consistently placed at the
 20 front of the "core listings," regardless of the ending time for his auctions.

21 14. The Batch Uploading Tool was not available to Plaintiffs, so Plaintiffs' items
 22 were listed at or near the end of the total listings until just a few hours before the ending time.
 23 Accordingly, Plaintiffs' listings were so buried as to be virtually invisible through much of the
 24 duration of an auction, and that lack of visibility has had a dramatic negative effect on Plaintiffs'
 25 sales.

26 15. On information and belief, eBay is aware of Mr. Molayem's manipulation of the
 27 Batch Uploading Tool, initially secretly allowed Mr. Molayem to use the Batch Uploading Tool,
 28 and now openly condones such use. This reckless approach by eBay has resulted in a

1 competitive advantage for Mr. Molayem and his eBay Live Auctions businesses, and a
 2 concomitant competitive disadvantage for all other sellers not provided access to the Batch
 3 Uploading Tool, including Plaintiffs.

4 **FIRST CAUSE OF ACTION**

5 **Robinson-Patman Act – 15 U.S.C. § 13 *et seq.***

6 16. Plaintiffs incorporate by reference paragraphs 1 through 15 inclusive, as if fully
 7 set forth here.

8 17. The auctions hosted by eBay Live Auctions attract buyers and sellers throughout
 9 the world, and eBay conducts commercial activities in interstate commerce. On information and
 10 belief, George Molayem and his eBay Live Auction businesses sell jewelry in interstate
 11 commerce. Plaintiffs also conduct jewelry sales in interstate commerce.

12 18. eBay's actions as alleged herein, including encouraging and condoning its direct
 13 client's use of the Batch Uploading Tool to force sales items into the primary "core listings,"
 14 while not making the Batch Uploading Tool available to all sellers, constitutes discrimination
 15 with the effect of lessening, injuring, destroying, or preventing competition.

16 19. eBay's actions have injured Plaintiffs in that their sales and revenues have
 17 declined substantially as a result.

18 20. eBay's actions have lessened, injured, destroyed, or prevented competition in that
 19 Plaintiffs are unable to compete with Mr. Molayem in the area of live auction jewelry sales. Mr.
 20 Molayem's items enjoyed preferential listing status, making Plaintiffs' items difficult to find and
 21 therefore less likely to attract buyers.

22 **SECOND CAUSE OF ACTION**

23 **Unfair Practices Act – California Business and Professions Code § 17045**

24 21. Plaintiffs incorporate by reference paragraphs 1 through 20 inclusive, as if fully
 25 set forth here.

26 22. Plaintiffs use eBay's live auctions services on like terms and conditions as Mr.
 27 Molayem. eBay extended to Mr. Molayem a special privilege, the use of the Batch Uploading
 28 Tool, which was not extended to Plaintiffs.

23. eBay's extension to Mr. Molayem of this special privilege has injured Plaintiffs in that their sales and revenues have declined substantially as a result.

24. eBay's secret acquiescence in Mr. Molayem's use of the Batch Uploading Tool, a special privilege not extended to Plaintiffs, tends to destroy competition in that Plaintiffs and Mr. Molayem, both competitors in the same marketplace, are not competing on an even basis.

25. On information and belief, eBay acquiesced in Mr. Molayem's use of the Batch Uploading Tool because as a direct client to eBay, Mr. Molayem's completed sales generate more revenue for eBay than do sales by Plaintiffs, who use the services of Live Auctioneers.

THIRD CAUSE OF ACTION

Common Law Unfair Competition

26. Plaintiffs incorporate by reference paragraphs 1 through 25 inclusive, as if fully set forth here.

27. eBay has engaged in unfair competition, among other ways, by providing the Batch Uploading Tool to Mr. Molayem but not to Plaintiffs.

28. eBay continues to engage in unfair competition, among other ways, by not providing the Batch Uploading Tool to all sellers using eBay Live Auctions.

29. eBay's acts have caused Plaintiffs competitive injury, as described herein, and specifically have caused Plaintiffs to incur damages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealing

30. Plaintiffs incorporate by reference paragraphs 1 through 29 inclusive, as if fully set forth here.

31. On or about April 2005, Windsor Auctions entered into a written agreement with eBay, pursuant to which Windsor Auctions would sell jewelry through eBay Live Auctions. eBay agreed to provide a venue for Windsor Auctions to conduct online auctions, and Windsor Auctions agreed to pay eBay certain fees for using that venue to sell items at auction.

32. Windsor Auctions has performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the agreement.

33. eBay has engaged in unfair dealing in connection with the agreement, by providing the Batch Uploading Tool to Mr. Molayem but not to Plaintiffs.

34. Windsor Auctions reasonably expected that entering into the agreement with eBay would put Windsor Auctions on equal footing with all other sellers using eBay Live Auctions. eBay's actions have disappointed those reasonable expectations and frustrated the common purpose of the agreement.

35. Plaintiffs have not attached to this pleading a copy of the agreement between Windsor and eBay, because it contains a confidentiality provision. However, the agreement is available, and this pleading can be amended to include the agreement.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray:

1. That this Court award Plaintiffs damages in a sum according to proof.
2. That this Court award Plaintiffs treble damages in a sum according to proof.
3. That this Court award Plaintiffs the costs of this action.
4. That this Court award Plaintiffs reasonable attorneys' fees and expenses.
5. That this Court grant such other and further relief as it should deem just.

JURY DEMAND

Plaintiffs demand a trial by jury.

DATED: DECEMBER 21, 2007

BERLINER COHEN

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